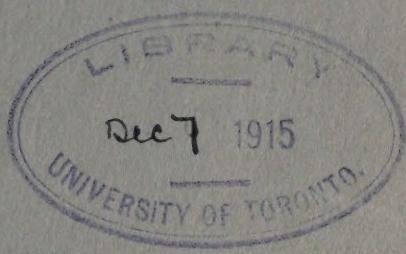


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PROCEEDINGS RELATING TO THE EXPULSION OF
EZEKIEL HART FROM THE HOUSE OF
ASSEMBLY OF LOWER CANADA.

CONTRIBUTED BY RABBI JULIUS J. PRICE.



Reprinted from
PUBLICATIONS OF THE
AMERICAN JEWISH HISTORICAL SOCIETY,
No. 23, 1915.

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FRIDAY, 29TH JANUARY, 1808.¹

Mr. Berthelot acquainted the House, that Ezekiel Hart, Esquire, returned to represent the Borough of Three-Rivers, had taken the Oaths, and was waiting without the Bar to be admitted.

A member having asked, whether Mr. Hart took the Oaths in the customary manner?

Mr. Berthelot added, that Mr. Hart took the Oaths on the Bible, his head being covered.

Mr. Turgeon, informed the House, that he was present with Mr. Berthelot, when Mr. Hart took the Oaths, and that he did take the said Oaths in the manner described by Mr. Berthelot.

MONDAY, 1ST FEBRUARY, 1808.

The House was moved, that the entry of the twenty-ninth of January last, respecting the application of Ezekiel Hart, Esquire, to be admitted to take his seat as a Member of this House for the Borough of Three-Rivers, be now read.

And the said entry being read accordingly.

Mr. Berthelot acquainted the House that in the information given by him on the twenty-ninth day of January last he said that Ezekiel Hart, Esquire, had taken the Oath and not the Oaths.

Upon motion of Mr. Attorney General, seconded by Mr. Justice De Bonne, Resolved, That it is the opinion of this House, that Ezekiel Hart, Esquire, returned to represent the Borough of Three-Rivers, hath not taken the Oath in the customary manner.

Ordered, That the Clerk Assistant of this House do furnish the said Ezekiel Hart, Esquire, with a Copy of the next preceding

¹ From the Journals of the House of Assembly of Lower Canada for the years 1808 and 1809.

resolution, to the end that he may thereupon pursue such further course in the premises as the law of Parliament may be found to require.

FRIDAY, 12TH FEBRUARY 1808.

A petition of Ezekiel Hart, Esquire, returned to represent the Borough of Three-Rivers, was read by Mr. Mure, in his place.

Mr. Mure moved, seconded by Mr. Berthelot, that the said petition be now brought up.

The House was then moved, that the information given to this House, on the twenty-ninth day of January last, touching the manner in which Mr. Hart had taken the Oaths; with the resolution and order of the House on the said information, the first of February instant; as also the petition presented to this House, the ninth instant, from Thomas Coffin, Esquire,² against the return of the said Ezekiel Hart, be now read.

The said information, resolution, order and petition, were read accordingly.

The question was now put, viz:

That the petition of Ezekiel Hart, Esquire, be brought up?

ORDERED, that the said petition be brought up.

The said petition was, accordingly brought up and read.

SETTING FORTH: That to his deep regret, a resolve of this House has been communicated to him, expressive of the petitioners not having taken the Oath in the customary manner.

That on the 29th day of January last, he duly did take the Oath as prescribed³ by Statute 31st of his present Majesty, chapter 31st, Section 29th, to qualify the petitioner to a seat in this House.

The said Oath was administered to the petitioner in a conscientious and lawful manner as directed by His Majesty's Commissioners, and that the petitioner regards the said oath on his part legal, binding and sacred to every purpose whatsoever.

² On the 9th of February, a petition was received from Mr. Coffin setting forth that Ezekiel Hart, being of the Jewish Religion, was incapable of taking the oaths required and therefore of sitting and voting in the House of Assembly and that the votes given him at the election ought to be considered as null and void and requesting that the petitioner, having a majority of legal votes, be declared elected for the Town of Three Rivers.

³ For a copy of the oath prescribed see Shortt and Doughty, "Constitutional Documents, 1759-1791" (1907), p. 701.

That however sensible he is, that he has taken the Oath according to the true meaning of the Constitutional law of this Province, yet he will not object to have the same re-administered to him in the usual form.

The Petitioner therefore humbly solicits, that the House will be pleased to admit the petitioner to take his seat accordingly.

WEDNESDAY, 17TH FEBRUARY 1808.

Ordered, That the entries in the Journals touching the manner in which Ezekiel Hart, Esquire, (returned to serve in this House as a member for the Borough of Three-Rivers) took the oath prescribed by the 31st of his present Majesty, chapter 31st, be now read—And the said entries were read accordingly.

Resolved, That the manner in which the said Ezekiel Hart, Esquire, took the said Oath is that practised in Courts of Justice, when Oaths are administered to persons professing the Jewish religion.

Resolved, That this House do now receive information from the Members thereof, or any of them, touching their knowledge of the religious profession of Ezekiel Hart, Esquire.

Accordingly the House proceeded to receive the said information.

And Mr. Mure in his place, acquainted the House, that a few days ago, Mr. Hart informed him, personally, that he was brought up in the profession of the Jewish religion, and that he was still of that persuasion.

And Mr. Mondelet, in his place, acquainted the House, that in a recent conversation with Mr. Hart, the said Mr. Hart, told him, he could not deny that he was a Jew; that he had always professed, and did still profess the Jewish religion; and that this avowal on the part of Mr. Hart, was made since he has been soliciting to be permitted to take his seat in the House and since he took the Oath.

And the Honorable Mr. Justice Foucher, in his place, acquainted the House, that to his certain knowledge, the said Ezekiel Hart, is a professed Jew; that he has attained this knowledge from having known him to be a Jew from the beginning of the year 1803. That he (Mr. Hart) follows the Jewish customs, and that in the Courts of Justice he never took the oath but in the form it is taken by Jews. Mr. Justice Foucher, further added, that as a Judge, he particularly knows the said Hart to be a Jew; as he had, lately, in person, pleaded before him, for certain privileges to which he conceived he had a right, to wit; that of not being summoned to

appear in the Courts of Justice on Saturday, it being his Sabbath day, and that of the Jews.

Resolved, That it appears to this House, that Ezekiel Hart, Esquire, returned to serve in this House as a Member for the Borough of Three-Rivers, is of the Jewish profession of religion.

Resolved, That the said Ezekiel Hart, Esquire, be heard at the Bar of this House, on Friday next, by himself⁴ or Council, if he shall see fit, on the legality of his pretensions to take his seat in this House, and to sit and vote therein, notwithstanding his being of the Jewish religion, and his having taken the Oath in the manner customary only for persons of that persuasion.

Ordered, That a copy of the Resolutions and information of this day, respecting the said Ezekiel Hart, Esquire, be furnished to him by the Deputy Clerk of this House.

SATURDAY, 20TH FEBRUARY, 1808.

The order of the day for the House to resolve into a Committee of the whole, to take into further consideration, the petition of Ezekiel Hart, Esquire, being read.

The House accordingly, resolved itself into the said Committee. Mr. Speaker left the Chair.

Mr. Vige took the Chair of the Committee;

Mr. Speaker resumed the Chair.

And Mr. Vige reported, that the Committee had come to a resolution, which he was directed to report to the House, whenever it shall be pleased to receive the same.

Ordered, that the report be now received.

And he read the report in his place, and afterwards delivered it in at the Clerk's Table, where it was again read, and is as followeth, viz.

Resolved, That it is the opinion of this Committee, that Ezekiel Hart, Esquire, professing the Jewish Religion, cannot take a seat, nor sit, nor vote in this House.

Mr. Justice Foucher moved, seconded by Mr. Cartier, that the question of concurrence be now put upon the said resolution.

The House divided upon the question:

Yea 21,

Nays 5,

⁴ On the appointed day, Mr. Hart was heard at the Bar of the House, and the Assembly resolved that on February 20th it would resolve itself into a Committee of the Whole House to further consider Mr. Hart's petition.

So it was carried in the affirmative, and

Resolved, that Ezekiel Hart, Esquire, professing the Jewish Religion, cannot take a seat, nor sit, nor vote in this House.

WEDNESDAY, 19TH APRIL, 1809.

Mr. Mondelet moved, seconded by Mr. Trestler, to resolve, that Ezekiel Hart, Esquire, returned as one of the Representatives of the Borough of Three-Rivers, to serve in the present Provincial Parliament, and who is now sitting in this House, is the same Ezekiel Hart, who was returned to serve in the Fourth Session of the Provincial Parliament in the room of the late Honourable John Lees for the aforesaid Borough.

On motion of Mr. Bourdages, seconded by Mr. Jos. Turgeon:—

Ordered, That Mr. Mondelet's motion, be amended as follows, viz.

After "Resolve" leave out all the other words and insert, "that this House do now receive information, through the Members thereof, or any of them, whether Ezekiel Hart, Esquire, returned as one of the Members of this House, to sit therein, in the room and stead of the late Honourable John Lees, is the same Ezekiel Hart who is returned as elected to serve in the present Parliament, and who has already taken his seat, as one of Representatives for the Borough of Three Rivers, and the same who was declared incapable of sitting and voting during the last Session."

The question was now put on the main motion as amended, which was agreed to. Ordered, that the House do now receive the said information:

The House accordingly proceeded to receive the said information:

And, Mr. Mondelet, and Mr. Bourdages, in their places, severally informed the House, that Ezekiel Hart, Esquire, returned as one of the Members of this House, to sit therein in the room and stead of the late Honourable John Lees, is the same Ezekiel Hart who is returned as elected to serve in the present Parliament, and who has already taken his seat, as one of the Representatives for the Borough of Three-Rivers, and the same who was declared incapable of sitting and voting during the last Session.

And Mr. Mure, in his place, informed the House, that Mr. Hart, who now sits in the House as a Representative for the Borough of Three-Rivers, is the same Ezekiel Hart, Esquire, that was returned to serve in the last Provincial Parliament for the said Borough, in the place and stead of the late Honourable John Lees.

Mr. Mondelet now moved to resolve, seconded by Mr. Durocher: That Ezekiel Hart, Esquire, who sits in the present Parliament as one of the Representatives of the Borough of Three Rivers, is the same Ezekiel Hart, who was returned as one of the Representatives of the said Borough, in the last Parliament, and was declared incapable of sitting and voting in the last Session; as he professed the Jewish religion.

The House divided on the question: Yeas 35, Nays 5,
So it was carried in the affirmative, and—Resolved accordingly.

FRIDAY, 5TH MAY, 1809.

The order of the day for reading the entries in the Journals, containing the information given to this House, on the 17th of February, 1808, concerning the Religion of Ezekiel Hart, Esquire, be read:

The said entries were accordingly read by the Clerk.

Mr. Mondelet moved, seconded by Mr. Robitaille, to resolve that the Members of this House, in whose presence Ezekiel Hart, Esquire, took the Oath, at the opening of the present Parliament, do inform the House, how he took the said Oath.

So it was carried in the affirmative; and, Resolved accordingly.

And the House proceeded to receive the said information.

And Mr. Bourdages and Mr. Duchesnay, in their places, respectively acquainted the House, that they were present, when Ezekiel Hart, Esquire, one of the Representatives of the Borough of Three Rivers, did take the Oath; that the head of the said Ezekiel Hart, was uncovered, and his hand on a book. That when the said book was presented to Mr. Blackwood, one of the Members who was sworn with the said Ezekiel Hart, he, Mr. Blackwood, asked the Commissioners appointed to administer the Oaths to the Members, what book it was? that the said Commissioners answered "It is the New Testament"; that Mr. Blackwood said, it is very well; kissed the book, and presented it to Mr. Hart; who kissed it also.

Mr. Mondelet now moved to resolve, seconded by Mr. Martineau:

That Ezekiel Hart, Esquire, professing the Jewish Religion, as appears by the entry of the 17th February, 1808, in the Journals of the last Session, and inasmuch, as he did at the opening of the present Session, take an Oath on the Holy Evangelist, which could not bind him, and did therefore profane the Religious institution thereof, cannot take a seat, nor sit, nor vote in this House.

Whereupon Mr. Bedard moved in amendment, seconded by Mr. Papineau, to strike out all the words after, "Religion," and insert the following, "cannot sit nor vote in this House."

The question was not put upon Mr. Bedard's proposed amendment; a division again ensued; and the names being called, for, they were taken down as follows; *videlicet*:

Yea,

Messieurs Durocher, Joseph Turgeon, F. Roi, Delorme, Langlois, M. Caron, L. Turgeon, L. Roi, Bourdages, Huot, Plante, Bedard, Mondelet, Borgia, Papineau, Robitaille, Coffin and Martineau.

Nay,

Messieurs Moore, J. Cuthbert, Justice De Bonne, Gray, R. Cuthbert, Blackwood, The Solicitor General, and Mure.

So it was carried in the affirmative.

The question being put upon Mr. Mondelet's motion, as amended, the House divided; and the division proving to be the same as the last; *videlicet*:

Yea 18, Nay 8,

Resolved, that Ezekiel Hart, Esquire, professing the Jewish religion, cannot sit, nor vote in this house.⁵

On Wednesday the 10th of May 1809, this bill was referred back to the Governor General's House who took the following attitude with regard to the above proceedings.⁶

WEDNESDAY, 10TH MAY 1809.

At the Council Chamber in the Governor General's House,
present,

His Excellency Sir James H. Craig, K. B. Governor in Chief,
The Honble. The Chief Justice,
The Lord Bishop of Quebec,
Thomas Dunn, Francois Baby, Pierre A. DeBonne,
John Young, and Jenkin Williams, Esq.

⁵ On the 8th of May the Speaker was informed that there was a vacancy in the representation for the Borough of Three Rivers. The Dissolution of Parliament removed the necessity for holding a bye-election and in the general election which followed Ezekiel Hart was not a candidate.

⁶ From the original Minutes of the Executive Council, Canadian Archives, State Book E, p. 511.

His Excellency communicated to the Board the Report of the Committee of the whole Council in Answer to the Queries proposed for their Consideration on the 19th of April last.

Approved and ordered to be entered.

(The report)

To His Excellency Sir James H. Craig K. B. Captain General & Governor in Chief of the Province of Lower Canada &c &c &c.

Report of a Committee of the whole Council—Present, the Hon. the Chief Justice in the Chair, the Lord Bishop of Quebec, Mr. Dunn, Mr. Baby, Mr. DeBonne, Mr. Young, and Mr. Williams—On His Excellency's Reference, in Council, of the 19th April last, of certain Queries relative to the eligibility of Jews to sit in the House of Assembly.

May it please Your Excellency.

The Committee is of opinion that a Jew may be elected to the House of Assembly of this Province and may sit and vote upon taking the Oaths required by Law in the customary manner.

This opinion is founded upon the following Reasons—

By the Statute 13 Geo. II, Cap. 7. It is enacted that all Foreigners naturalized by that Act "shall be deemed adjudged and taken to be His Majesty's natural born Subjects to all intents constructions and purposes whatsoever as if they and every of them had been or were born within the Kingdom" and it is self evident from the second Section of this Act that Jews are comprehended within its intention.

By the Statute 31 Geo. III, Cap. 31, Sec. 2, it is enacted that there shall be in each of the Provinces of Upper & Lower Canada a Legislative Council and Assembly to be "composed and constituted in the manner therein after described."

By the 14th Section of the same Act it is enacted that His Majesty may authorize the Governor by an Instrument under the Great Seal to summon and call together an assembly in and for the province and the State then proceeds to declare how this Assembly is to be "constituted and composed" for which purposes the 14th 15th 16th 18th and 19th Sections provide for the division of the Province into Counties for the Appointment of Returning Officers and the issuing and execution of the Writs of Election. The 17th Section enacts that the number of members shall not be less than fifty and the 20th having declared the qualification of the Electors. It is by the 21st Section provided that no person shall be capable of being elected a Member to "serve in the Assembly or of sitting or Voting therein who shall be a member of the Legislative Coun-

cil or a Minister of the Church of England or a Minister Priest Ecclesiastic or Teacher either according to the rites of the Church of Rome or under any other form or profession of Religious Faith or Worship."

By the 2nd "that no person shall be capable of being elected who shall not be of the full Age of 21 years and a Natural born Subject of His Majesty or a Subject of His Majesty naturalized by Act of the British Parliament or a Subject of His Majesty having become such by the Conquest and Cession of the Province of Canada."

And by the 23rd "that no person shall be capable of being elected who shall have been attainted for Treason or Felony in any Court of Law within any of His Majesty's Dominions or be within the description of persons disqualified by any Act of the Legislative Council and Assembly of the Province assented to by His Majesty His Heirs and Successors."¹

Such therefore is the manner in which the Assembly is to be composed according to this Act and these being the only disqualification it follows that any Candidate who has been naturalized by any Act of the British Parliament (and consequently a Jew naturalized by the State 13th Geo. II. Cap. 7) or who is a natural born Subject (which the Son of a Jew naturalized must be if born in the Province) who is not a Member of the Legislative Council nor a minister of the Church of England, nor a Minister Priest Ecclesiastic or Teacher either according to the rites of the Church of Rome or under any other form or profession of religious faith or Worship nor under Twenty one years of age nor attainted for Treason or Felony nor within any description of persons disqualified by an Act of the Provincial Parliament must be eligible to a Seat in the Assembly.

The Committee is further confirmed in this opinion by the 42nd Section of 31. of Geo. III. which enacts "that whenever any Act or Acts containing any provisions "which shall in any manner relate to or affect the enjoyment or exercise of any religious form or mode of Worship or shall impose or create any Penalties Burthenes Disabilities or Disqualifications in respect of the same" "every such Act or Acts shall previous to any declaration or signification of the King's Assent thereto be laid before both Houses of Parliament of Great Britain."² The irresistible infer-

¹ See Shortt and Doughty, *supra*, p. 695.

² *Ibid.*, p. 698.

ence from this Section being that a disqualification to sit in the House of Assembly on account of any religious Tenets cannot be created without an Act of the Legislative Council and Assembly of the Province assented to by His Majesty with the concurrence of the Houses of Lords and Commons of the United Kingdom.

The Committee is of opinion that the Protection of His Majesty's Government is equally due from Your Excellency to all His Majesty's Subjects and that Your Excellency is bound as far as possible to prevent the House of Assembly from assuming a Power beyond what is allowed to them by the Constitution.

The Committee is also of opinion that the expulsion of any Member upon any principle of "general" Disqualification not declared by the Act of the 31. Geo. III. Cap. 31,^{*} or by some Provincial Statute would be an Assumption of Power beyond what is allowed them by the former Statute—But

The Committee is also of opinion that it will not become the duty of your Excellency immediately to dissolve the Assembly if by vote only they should expell a Jew without assigning any other reason except that he is of the Jewish Religion and that a dissolution if it should finally be adopted for such Cause only ought for the present to be suspended.

The Committee is of this opinion for the following among other reasons because in such case the House would act Judicially so that admitting them to be wrong they must be presumed to act from an error in Judgment and not corruptly unless the contrary is most manifest. It seems therefore to the Committee advisable before any steps whatever are taken that the error of their Proceedings should in point of Law be established by the opinions of the highest legal authority to which recourse can be had in England and be notified to the house by a Message recommending an Act disqualifying Jews or in some other shape if their Proceedings should by such opinions be proved ultimately to be erroneous a Wilful instance of a similar Expulsion after such Steps on the part of the Executive Government might under Circumstances make it the duty of the Governor to dissolve the House.

The Committee also find that Mr. Ezekiel Hart was by the last House of Assembly expelled "because he professed the Jewish Religion" and for no other Cause so that the present House has the Sanction of a precedent expressly in point.

The Committee is of opinion that any Member expelled by the

^{*} *Ibid.*, p. 705.

House of Assembly who is not legally disqualified or has not legally forfeited his Seat is entitled to common with all other Subjects who are unjustly aggrieved to the justice and protection of His Majesty's Government so far as that can be extended to him without prejudice to the interests of the rest of His Majesty's Subjects in general and they do not perceive that such protection can be given by any other step than a dissolution but upon the expediency of an immediate dissolution on account of such expulsion as is the particular object of Your Excellency's present Reference the Committee humbly beg leave to refer to what they have before stated.

All of which is most respectfully submitted to Your Excellency's Wisdom.

By order

(Signed) J; SEWELL: Chairman,

Council-Chamber,

Bishop's Palace,
9th May 1809.

